

08-CR-05309-ORD

MAGISTRATE JUDGE THEILER

FILED	LOGGED
RECEIVED	
JUL 14 2008	
CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA	
BY	DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRYAN ROSE

Defendant.

NO: CR 08-5309

FINDINGS AND ORDER
ACCEPTING DEFENDANT FOR
DEFERRED PROSECUTION,
APPROVING TREATMENT PLAN,
AND DIRECTING DEFENDANT TO
TAKE TREATMENT AS
PRESCRIBED

(Clerk's Action Required)

THIS MATTER, coming on for hearing this 14th day of July, 2008, upon the defendant's Petition for Deferred Prosecution; the defendant appearing in person and by his attorney, MATTHEW L CLUCAS, and the United States of America being represented by Barbara Sievers, Assistant United States Attorney; the Court, having examined and incorporated into the record Petitioner's Petition and Statement in support of deferred prosecution, the evaluation and treatment report prepared by Cascade, and the files and records herein, being fully advised in the premises, does now make and enter the following:

FINDINGS AND ORDER ACCEPTING DEFENDANT
FOR DEFERRED PROSECUTION, APPROVING
TREATMENT PLAN, AND DIRECTING DEFENDANT
TO TAKE TREATMENT AS PRESCRIBED - 1

BENNETT RAINEY MORAN
GIANNESCHI & CLUCAS, Inc. P.S.
9057 Washington AVE NW, Suite 200
Silverdale, WA 98383
(360) 698-3000 / FAX (360) 698-6562

I. FINDINGS OF FACT

A. On or about the 16th day of December, 2007, Petitioner was charged with the offense charged in the Information. This offense occurred as a direct result of alcoholism/chemical dependency problems;

B. Petitioner suffers from an alcohol/drug problem and is in need of treatment;

C. The probability of similar misconduct in the future is great if the problem is not treated;

D. Petitioner is amenable to treatment;

E. An effective rehabilitative treatment plan is available to Petitioner through Cascade, an approved treatment facility as designated by the laws of the State of Washington, and Petitioner agrees to be liable for all costs of this treatment program;

F. That Petitioner agrees to comply with the terms and conditions of the program offered by the treatment facility as set forth in the diagnostic evaluation from Cascade, attached to Statement of Petitioner filed herewith, and that Petitioner agrees to be liable for all costs of this treatment program;

G. That Petitioner has knowingly and voluntarily stipulated to the admissibility and sufficiency of the facts as contained in the written police report attached to Statement of Petitioner filed herewith.

H. That Petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing or trial on the underlying offense or offenses held subsequent to

**FINDINGS AND ORDER ACCEPTING DEFENDANT
FOR DEFERRED PROSECUTION, APPROVING
TREATMENT PLAN, AND DIRECTING DEFENDANT
TO TAKE TREATMENT AS PRESCRIBED - 2**

**BENNETT RAINEY MORAN
GIANNESCHI & CLUCAS, Inc. P.S.
9057 Washington AVE NW, Suite 200
Silverdale, WA 98383
(360) 698-3000 / FAX (360) 698-6562**

1 revocation of this Order Granting Deferred Prosecution and that these reports will be
2 used to support a finding of guilt;

3 From the foregoing FINDINGS OF FACT, the Court draws the following:

4 **II. CONCLUSIONS OF LAW**

5
6 A. That the above-entitled Court has jurisdiction over the subject matter
7 and Petitioner Bryan Rose, in this case;

8 B. That Petitioner's Petition for Deferred Prosecution meets the
9 requirements of RCW 10.05 etseq.;

10 C. That the diagnostic evaluation and commitment to treatment meets the
11 requirements of RCW 10.05.150;

12 D. That Petitioner is eligible for deferred prosecution.

13 **III. ORDER**

14 Having made and entered the foregoing FINDINGS OF FACT and
15 CONCLUSIONS OF LAW, it is hereby

16 ORDERED that the defendant is accepted for deferred prosecution. The
17 prosecution of the above-entitled matter is hereby deferred for five (5) years pursuant
18 to RCW 10.05 et seq., upon the following terms and conditions:

19 A. Petitioner shall be on probation for the deferral period and follow the rules
20 and regulations of probation;

21 B. Petitioner shall enroll in and successfully complete the two-year
22 treatment program recommended by Cascade according to the terms and
23 conditions of that plan as outlined in the diagnostic evaluation, a true copy of which is
24

25
26 **FINDINGS AND ORDER ACCEPTING DEFENDANT
FOR DEFERRED PROSECUTION, APPROVING
TREATMENT PLAN, AND DIRECTING DEFENDANT
TO TAKE TREATMENT AS PRESCRIBED - 3**

**BENNETT RAINEY MORAN
GIANNESCHI & CLUCAS, Inc. P.S.
9057 Washington AVE NW, Suite 200
Silverdale, WA 98383
(360) 698-3000 / FAX (360) 698-6562**

1 attached to the Petition and incorporated herein by reference. Petitioner shall not
2 change treatment agencies without prior Probation approval;

3
4 C. The treatment facility, Cascade, shall file with the United States
5 Probation Office status reports of Petitioner's compliance with treatment, monthly
6 during the first year of the deferred prosecution period and every three (3) months
7 during the second year. The Court may increase the frequency of these reports at
8 its discretion;

9 D. Petitioner shall notify U.S. Probation within 72 hours of any residence
10 change.

11 E. Petitioner shall abstain during the deferred prosecution period from any
12 and all consumption of alcoholic beverages and/or non-prescribed mind-altering
13 drugs;

14 F. Petitioner shall not operate a motor vehicle on the public highways without a
15 valid operator's license and proof of liability insurance sufficient to comply with the
16 state laws on financial responsibility;

17 G. Petitioner shall be law abiding and shall not commit any alcohol/drug
18 related offenses or other criminal offenses during the period of deferral,

19 H. Petitioner shall notify U.S. Probation within 72 hours of being arrested,
20 questioned, or cited by Law Enforcement.;

21 I. In the event that Petitioner fails or neglects to carry out and fulfill any term
22 or condition of his treatment plan or violates any provision of this Order or any
23 rule or regulation of his probation officer, upon receiving notice, the Court shall hold
24
25
26

**FINDINGS AND ORDER ACCEPTING DEFENDANT
FOR DEFERRED PROSECUTION, APPROVING
TREATMENT PLAN, AND DIRECTING DEFENDANT
TO TAKE TREATMENT AS PRESCRIBED - 4**

**BENNETT RAINEY MORAN
GIANNESCHI & CLUCAS, Inc. P.S.
9057 Washington AVE NW, Suite 200
Silverdale, WA 98383
(360) 698-3000 / FAX (360) 698-6562**

1 a hearing to determine why Petitioner should not be removed from deferred
2 prosecution and prosecuted for the offense charged;

3 J. In the event the Court finds cause to revoke this deferred prosecution,
4 the stipulated police reports shall be admitted into evidence, and Petitioner shall
5 have her guilt or innocence determined by the Court;

6 K. That the statement of Petitioner for Deferred Prosecution shall remain
7 sealed, and all subsequent reports or documents relating to ^{his} ~~her~~ treatment
8 information shall be sealed, to maintain confidentiality of Petitioner's treatment
9 information;
10

11 L. That the Department of Licensing be notified of this Order accepting the
12 Petitioner for deferred prosecution;

13 M. Upon proof of Petitioner's successful completion of five years deferral
14 period in this Order, the Court shall dismiss the charges pending against Petitioner.

15 N. Additional conditions: _____
16
17

18 DONE IN OPEN COURT this 14 day of July, 2008.

19 
20 _____
21 UNITED STATES MAGISTRATE JUDGE
22
23
24
25
26

**FINDINGS AND ORDER ACCEPTING DEFENDANT
FOR DEFERRED PROSECUTION, APPROVING
TREATMENT PLAN, AND DIRECTING DEFENDANT
TO TAKE TREATMENT AS PRESCRIBED - 5**

**BENNETT RAINEY MORAN
GIANNESCHI & CLUCAS, Inc. P.S.
9057 Washington AVE NW, Suite 200
Silverdale, WA 98383
(360) 698-3000 / FAX (360) 698-6562**

1 Presented by:

2 BENNETT RAINEY MORAN
3 GIANNESCHI & CLUCAS, Inc. P.S.

4 
5
6 MATTHEW L. CLUCAS WSBA 22929
Attorney for Petitioner

7 I have received a copy of the foregoing Order of Deferred Prosecution. I
8 have read and understand its contents, and agree to abide by the terms and
9 conditions set forth herein.

10 Dated: 7-14-2008

11 
Petitioner

12 I certify that a copy of this signed Order was mailed to the subject
13 treatment facility on July 15th, 2008. The United States
14 Probation Office was also furnished a copy of this Order.

15 
Clerk

16
17
18
19
20
21
22
23
24
25
26
**FINDINGS AND ORDER ACCEPTING DEFENDANT
FOR DEFERRED PROSECUTION, APPROVING
TREATMENT PLAN, AND DIRECTING DEFENDANT
TO TAKE TREATMENT AS PRESCRIBED - 6**

**BENNETT RAINEY MORAN
GIANNESCHI & CLUCAS, Inc. P.S.
9057 Washington AVE NW, Suite 200
Silverdale, WA 98383
(360) 698-3000 / FAX (360) 698-6562**